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MSHA will consult with the Council on Environmental Quality in connection with such situations, and will, in any event, prepare environmental assessments or environmental impact statements, as appropriate, on any proposed permanent regulation to be promulgated for the purpose of replacing the temporary action.

(b) *Real property actions.* Actions that will involve construction, or the purchase or lease of property, in connection with the establishment or substantial alteration of a Job Corps center, of any similar Job Corps facility, or other property actions of a similar character by another agency, will normally require the preparation of an environmental assessment prior to determining whether either a finding of no significant impact or an environmental impact statement must be prepared.

(c) *Other Departmental actions.* Certain actions taken to implement other Department of Labor programs will normally qualify for categorical exclusion from NEPA requirements. These matters are excluded because the possibility of environmental impact is remote. However, classification as a categorical exclusion does not prohibit or release an agency from preparing an environmental assessment or environmental impact statement when the agency determines it to be appropriate. These actions include:

(1) U.S. Employment Service activities and related placement, counseling, recruitment, information, testing, certification and associated actions;

(2) Apprenticeship activities and related certification and technical assistance actions;

(3) Training activities, other than Job Corps, including work experience, classroom training and public service employment;

(4) Unemployment insurance, trade adjustment assistance, workers' compensation programs, retirement programs, employee protection programs, and related employees benefit programs or activities involving the replacement or regulation of employee wages;

(5) Wage and hour programs to protect low-income workers, eliminate discriminatory employment practices, prevent curtailment of employment

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and earnings for certain groups of workers, minimize loss of income due to indebtedness, protect farm and migrant labor and related activities;

(6) Contract compliance programs to ensure equal employment opportunity and related actions;

(7) Labor-management relations activities and activities of labor organizations, employers and their officers or representatives;

(8) Research, evaluation, development and information collection projects related to any of the aforementioned activities;

(9) Labor statistics programs; and

(10) Matters involving personnel policy, procurement policy, freedom of information and privacy policy, and related matters of Departmental management.

§ 11.11 Development of environmental analyses and documents.

(a) Potential environmental effects of agency actions shall begin to be examined at the time a topic for potential action is submitted to the agency staff for research, proposal development, or other consideration. During this stage the agency shall determine whether the type of action which may be proposed may be categorically excluded from NEPA environmental analysis requirements pursuant to § 11.10. If the type of action being considered is not categorically excluded, or is an extraordinary case of a normally excluded action which may have significant environmental impacts, development of the information needed to make an environmental assessment shall begin. Actions described in § 11.10(b) shall be submitted to the Assistant Secretary for Administration and Management at this point, pursuant to applicable Departmental procedures, for appropriate review, including a determination with respect to whether or not the action is located in or near a floodplain or wetlands area in connection with the requirements of Executive Orders 11988 and 11990.

(b) When information gathered during the early stages of proposal development indicates that preparation of an environmental impact statement will be required, the agency shall begin

preparation of such a document by initiating the scoping process in accordance with 40 CFR 1501.7. However, if the information is not clearly indicative of the need for preparation of an environmental impact statement, an environmental assessment shall be prepared.

(c) Agencies are encouraged, in developing environmental assessments, to explore all factors which it may become necessary to examine should it be determined that preparation of an environmental impact statement is necessary, even though some of those factors, such as economic and social effects, "are not intended by themselves to require preparation of an environmental impact statement" (40 CFR 1508.14). Thus in making environmental assessments of real property actions described in § 11.10(b), agencies are encouraged to consider the following factors, among others:

(1) The nature and degree of any former use of a proposed facility and the number of individuals the facility formerly served, as compared with its use and population to be served under the new proposal;

(2) The population of the area (numbers, density and makeup);

(3) Community facilities and services, taking into consideration capacity and present and former use, including: Health services (hospitals, physicians), business and community development policy, recreational facilities (parks, theaters), fire and police protection, schools, energy resources, waste disposal, water, traffic and roadway systems, sewage systems, communications, and public transportation;

(4) The proximity of the facility to residential areas;

(5) The potential impact on the quality of drinking water, air quality, noise levels, designated scenic areas, land use, soil quality (including drainage or erosion problems), buildings valued for their design or which are otherwise locally significant, the listing or eligibility for listing of a site in the National Register for Historic places, consistent with the requirements of 20 CFR 684.24a where applicable, neighborhood character, and health and safety of residents;

(6) The potential impact on natural systems and resources including rivers

and streams, forests, wetlands, floodplains, wilderness areas or places, and species designated for preservation, including species of plants and animals and their critical habitats as identified in regulations published by the Secretary of the Interior (50 CFR chapter I, part 17), and by the Secretary of Commerce (50 CFR chapter II, parts 217, 222.23, 223, and 227.4); and

(7) Other considerations appropriate in light of the nature and size of the project.

(d) If an agency determines, on the basis of an environmental assessment, that preparation of an environmental impact statement is not required, notice of a finding of no significant impact and the availability of the environmental assessment shall be prepared and published in the FEDERAL REGISTER. In the case of proposed rulemaking, the notice of a finding of no significant impact may be published in the FEDERAL REGISTER at any time prior to the publication of the proposed action, or it may be included in the FEDERAL REGISTER notice of proposed rulemaking. Issuance of a finding of no significant impact at the proposal stage of rulemaking shall not foreclose further consideration of environmental issues during the rulemaking proceedings. Therefore the Department of Labor notes that, consistent with 40 CFR 1500.3, the finding shall not be considered final until promulgation of the rule involved (the action affecting the environment).

(1) If it is determined that preparation of an environmental impact statement is not required for an action, but that action is one which would normally require the preparation of an environmental impact statement, an action closely similar to one which would normally require the preparation of an environmental impact statement, or an action without precedent in this regard, the agency shall make a preliminary finding of no significant impact available for public review and comment. In accordance with 40 CFR 1501.4(e)(2), this finding shall be made available for at least 30 days before a final determination is made as to whether an environmental impact statement will be prepared, and before any public record may be closed and

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the proposed action may become effective.

(2) Although not required by 40 CFR 1501.4(e)(2), an agency may use the procedure described in § 11.11(d)(1) whenever the agency determines it to be appropriate.

(e) If it is determined on the basis of an environmental assessment, prepared in connection with an action described in § 11.10(b), that preparation of an environmental impact statement is required, or that public review is required in connection with actions in floodplains or wetlands that do not require environmental impact statements under E.O. 11988 or E.O. 11990, the agency shall consider altering the proposed action or changing the site of the proposed project, and shall proceed with preparation of an environmental impact statement or appropriate public review actions only after obtaining written authorization from the Assistant Secretary for Administration and Management.

(f) Filing of any draft environmental impact statement with the Environmental Protection Agency (EPA), pursuant to 40 CFR 1506.9, and circulation to the public, will ordinarily coincide with publication of the proposed agency action, which is the subject of that document, in the FEDERAL REGISTER. In any event, the statement will be made available for public comment for at least a 45-day period.

(g) The final decision on the proposed action shall be made not earlier than 90 days following publication of EPA's notice of the filing of the draft environmental impact statement, and, except as provided below, not earlier than 30 days following publication of EPA's notice of the filing of the final environmental impact statement.

(1) In accordance with 40 CFR 1506.10, an agency engaged in rulemaking under the Administrative Procedure Act or other statute, for the purpose of protecting the public health or safety, may waive the 30-day time period noted above and publish a decision on a final rule simultaneously with publication of the notice of the availability of the final environmental impact statement. Therefore, Departmental agencies (such as OSHA and MSHA) meeting these requirements, may file and

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circulate the final environmental impact statement at the same time a notice of decision is being published, provided that the final rule or action may not become effective for at least 30 days from the date of publication of the EPA's notice of filing of the final environmental impact statement.

(2) If a supplement to a final environmental impact statement is prepared, it shall be incorporated into the rulemaking record. If the supplement is prepared following the close of the rulemaking record and is based on, or introduces, new data or major new alternatives or analyses, the rulemaking record will be reopened for at least 30 days to receive public comments. The final action may not become effective for at least 30 days following EPA publication of the filing of the supplemental statement.

(h) In accordance with 40 CFR 1505.2, when an agency prepares a final environmental impact statement, the agency shall prepare a concise public record of decision detailing what the decision was, what alternatives were considered (specifying the environmentally preferable alternative), how those considerations entered into the decision, and whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, the reason they were not. This record may be contained in, or integrated with, the preamble to the FEDERAL REGISTER notice of final action or in any other public document considered appropriate by the agency.

§ 11.12 Content and format of environmental documents.

(a) An environmental assessment may be prepared in any format considered effective by the agency involved. When such a document is prepared in connection with a proposed action, it must be made readily available to the public either by placement into the public record (with public notice provided in accordance with 40 CFR part 1506) or by publication in the FEDERAL REGISTER. The preamble to the FEDERAL REGISTER notice of proposed rulemaking may be considered the environmental assessment provided that the document contains the elements required by 40 CFR 1508.9(b).